

PLEASE NOTE THAT A FORMAL APPLICATION FOR A HABITAT LOSS PERMIT HAS NOT BEEN FILED AT THIS TIME. THE FOLLOWING IS A DRAFT FORM OF DECISION FOR A HABITAT LOSS PERMIT SHOWING THE FORMAT AND POSSIBLE CONDITIONS FOR A FUTURE HABITAT LOSS PERMIT. BECAUSE A FORMAL APPLICATION HAS NOT BEEN FILED, CERTAIN DATES, FINDINGS AND OTHER INFORMATION IS ABSENT FROM THE DRAFT FORM OF DECISION, THIS INFORMATION WILL BE INCLUDED IN THE FINAL FORM OF DECISION.

DRAFT DATE: OCTOBER 1, 2009

Passerelle LLC
402 W. Broadway, Suite 1320
San Diego, CA 92101

**DRAFT
Habitat Loss Permit**

APPLICATION NUMBER: HLP XX-XXX, ER 03-02-059X

ASSOCIATED PERMIT(S): SPA 03-008, GPA 03-004, REZ 03-014, TM 5338,
STP 07-030, STP 07-031, LOG NO.03-02-059; SCH
NO. 2005011092

NAME OF APPLICANT: Dave Davis, Passerelle LLC

DESCRIPTION/LOCATION OF LOSS:

This document presents findings required for the issuance of a Habitat Loss Permit under the Endangered Species Act Section 4(d) rule for the California gnatcatcher (*Polioptila californica californica*). The action being addressed within these findings is the removal of coastal sage scrub associated with the Campus Park project within the County of San Diego. The project will impact 42.3 acres of coastal sage scrub and one pair of California gnatcatcher onsite. An additional 4.4 acres of coastal sage scrub will be impacted offsite as a result of road improvements, for a total of approximately 46.7 acres of coastal sage scrub impact.

The project is located on 416.1 acres in the community of Fallbrook, unincorporated area of San Diego County, north of Highway 76 (Pala Road), and bound on the west by Interstate 15.

The proposed project would directly impact approximately 243.7 acres onsite for the construction of single-family and multi-family residences, commercial, office professional, parks, associated roads and infrastructure. The project will also preserve approximately 172.4 acres on the 416.1 acre project site. Offsite improvements will impact an additional 50.6 total acres.

Elevation of the site ranges from approximately 260 feet above mean sea level (AMSL) along the southern boundary, to 850 feet (AMSL) at the northeastern boundary. Horse Ranch Creek traverses the southwestern boundary of the property, draining in a northwest to southeast direction toward the San Luis Rey River.

The majority of the project site is undeveloped, with non-commercial grazing and natural vegetation. An existing house and associated facilities are also located on the property. Horse Ranch Creek and several state and federal jurisdictional drainages are located onsite. Coastal sage scrub is found primarily on the northern portion of the property and is adjacent to Monserate Mountain open space (Heights at Pala Mesa).

Horse Ranch Creek and the coastal sage scrub habitat located in the northern portion will be preserved, with the proposed development largely focused within areas of previous disturbance. The site is within a block of mostly high and very high habitat value as indicated by the Habitat Evaluation Map.

REC Consultants evaluated the biological resources on the property in a Biological Technical Report (REC, 2009). A protocol survey for the California gnatcatcher was completed in 1999. Since the time of the surveys for the California gnatcatchers the site has burned, eliminating much of this species' habitat. It is expected that the habitat will regenerate and it is required that an updated survey be conducted prior to brushing and clearing to ensure that data for this species is accurate. Five pairs were detected during the survey. Therefore, the site is considered "occupied" by California gnatcatcher.

Two sensitive plants occur on the site: Parry's tetracoccus (*Tetracoccus dioicus*) and Palmer's grappling-hook (*Harpagonella palmeri*). Identified sensitive fauna includes the following: Northern red-diamond rattlesnake (*Crotalus ruber ruber*), Belding's orange-throated whiptail (*Aspidoscelis hyperythrus beldingi*), Cooper's hawk (*Accipiter cooperi*), southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*), yellow warbler (*Dendroica petechia*), yellow-breasted chat (*Icteria virens*), five pairs of coastal California gnatcatchers (*Poliophtila californica californica*), least Bell's vireo (*Vireo bellii pusillus*), and turkey vulture (*Cathartes aura*).

The NCCP Flowchart indicates the coastal sage scrub habitat is "Intermediate Potential Value for Long-term Conservation." At the required 2:1 mitigation ratio for this impact, the total required mitigation is 93.4 acres of occupied coastal sage scrub, with 87.3 acres preserved onsite and 6.1 acres mitigated offsite or by habitat creation.

Impacts to state and federal jurisdictional wetlands will require state and federal permits and mitigation both on- or offsite at a ratio of 3:1 that includes a minimum 1:1 wetland creation component. Other habitat impacts will be mitigated as follows:

Campus Park Summary of Impacts and Mitigation

Habitat	Existing acres	Impact acres	Offsite impacts	Mitigation ratios	Mitigation acres required	Acres preserved onsite	Acres mitigated offsite
Southern riparian forest	85.6	9.5	1.0	3:1	31.5 (10.5 creation, 21 enhancement)	76.1	10.5 creation
Southern willow scrub	1.6	1.6	0.1	3:1	4.98 (1.6 creation, 3.3 enhancement)	0.0	1.6 creation
Freshwater marsh	10.3	7.8	0.1	3:1	23.7 (7.9 creation, 15.8 enhancement)	2.5	7.9
Coast live oak woodland	2.8	1.3 (1.0 FMZ, 0.3 grading)	0.0	2:1, 3:1	2.9	1.5	1.4
Diegan coastal sage scrub	129.6	42.3	4.4	2:1	93.4	87.3	6.1
Non-native grassland	44.1	41.2	6.4	0.5:1	23.8	2.9	20.9
Non-native vegetation	0.1	0.1	0.7	0	0.0	0.0	0
Pasture	135.4	133.8	7.9	0.5:1	70.8	1.6	65.3
Disturbed	4.4	3.9	14.3	0	0.0	0.5	0
Developed	2.1	2.1	2.1	0	0.0	0.0	0
Eucalyptus woodland	0.1	0.1	1.7	0	0.0	0.0	0
Orchard	0.0	0.0	11.9	0	0.0	0.0	0
Total	416.1	242.4	50.6		190.9	172.4	113.7

In addition to onsite dedication of open space, revegetation of habitats, and purchase of offsite habitat, biological mitigation includes dedication of adequate limited building zones easements placed adjacent to open space and project boundaries. It also includes temporary and permanent fencing, open space signs, construction limitations to avoid take of gnatcatchers, least Bell's vireo, southern California rufous crowned sparrow, yellow warbler, yellow-breasted chat, raptors, and migratory birds and construction monitoring for impacts to wetland areas, and development and implementation of a revegetation plan and resource management plan which requires stewardship and monitoring of biological resources preserved in the dedicated conservation/open space easement.

The project footprint was the subject of a hardline agreement with the wildlife agencies for the draft North County Multiple Species Conservation Program (MSCP). In addition, the project was discussed at the Agency Batching Meeting on November 20, 2008.

DECISION:

The Director of Planning and Land Use has approved your application for a HABITAT LOSS PERMIT. This Habitat Loss Permit approval does not become final until both the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) concur with the Director's approval, by either of the following:

1. Concurrence implied by allowing a 30-day period, initiated by their receipt of this decision, to lapse without presenting written notification to the County that the decision is inconsistent with the Southern California Coastal Sage Scrub (CSS) Natural Community Conservation Planning (NCCP) Process Guidelines (CDFG, November 1993) or any approved subregional mitigation guidelines; or
2. Granting concurrence through written notification to the County prior to the conclusion of the 30-day period, initiated by their receipt of this decision, that the project is consistent with the Southern California CSS NCCP Process Guidelines or any approved subregional mitigation guidelines.

Pending the issuance of an associated Grading Permit, Clearing Permit or Improvement Plan from the County of San Diego, this Habitat Loss Permit allows for this additional loss of coastal sage scrub as described above and shown on the attached Habitat Loss Exhibit for a period of one calendar year commencing the day concurrence is given by both the USFWS and CDFG. If the loss of habitat, as authorized by this Habitat Loss Permit, has not occurred within this one-year period, this Habitat Loss Permit and the authorization for the loss of coastal sage scrub habitat that was not previously cleared, graded or removed expires.

This Habitat Loss Permit cannot be relied upon for the clearing, grading or removal of any vegetation until a valid Grading Permit, Clearing Permit or Improvement Plan has been issued from the County of San Diego authorizing such vegetation removal. Furthermore, use and reliance upon this Habitat Loss Permit cannot occur until all of the requirements as specified within the "Conditions of Approval" section of this permit have been satisfied.

CONDITIONS OF APPROVAL:

The following conditions will be placed on TM 5338. For the final Habitat Loss Permit, the list of conditions will be modified to require satisfaction of all conditions prior to use and reliance on the HLP.

- I. Prior to approval of grading permits or improvement plans for applicable units or phases, and prior to approval of the Final Map for applicable units or phases of grading, the applicant shall:

- A. Grant to the County of San Diego and the California Department of Fish and Game an open space easement, or grant to the California Department of Fish and Game a conservation easement, as shown on the approved Tentative Map on file with the Department of Planning and Land Use as Environmental Review Number Log # 03-02-059. This easement is for the protection of biological resources and prohibits all of the following on any portion of the land subject to said easement: grading; excavation; placement of soil, sand, rock, gravel, or other material; clearing of vegetation; construction, erection, or placement of any building or structure; vehicular activities; trash dumping; or use for any purpose other than as open space. Granting of this open space authorizes the County and its agents to periodically access the land to perform management and monitoring activities for the purposes of species and habitat conservation.

The sole exceptions to this prohibition are:

1. Selective clearing of vegetation by hand to the extent required by written order of the fire authorities for the express purpose of reducing an identified fire hazard. While clearing for fire management is not anticipated with the creation of this easement, such clearing may be deemed necessary in the future for the safety of lives and property. All fire clearing shall be pursuant to the Uniform Fire Code and the Memorandum of Understanding dated February 26, 1997, between the wildlife agencies and the fire districts and any subsequent amendments thereto.
2. Activities conducted pursuant to a revegetation or habitat management plan approved by the Director of Planning and Land Use or the Director of Public Works.
3. Vegetation removal or application of chemicals for vector control purposes where expressly required by written order of the Department of Environmental Health of the County of San Diego.
4. Activities required to be conducted pursuant to a landscaping plan approved by the Director of Planning and Land Use.
5. Maintenance and construction of private and public drainage facilities to the extent approved or required by written order of the Director of Public Works for the express purpose of reducing an identified flooding or drainage hazard. All maintenance of drainage facilities pursuant to this exception shall not be initiated until all applicable federal, state and local permits (e.g., California Section 1600 Streambed Alteration Agreement, County Watercourse Permit) have been obtained.
6. Passive recreation limited to hiking and equestrian trails.

- * This condition satisfies mitigation in the amounts of 76.1 acres of southern riparian forest, 2.5 acres of freshwater marsh, 1.5 acres of coast live oak woodland, 87.3 acres of coastal sage scrub, 2.9 acres of non-native grassland, 1.6 acres of pasture, and 0.5 acre of disturbed land for a total of 172.4 acres.
- B. Grant to the County of San Diego a Limited Building Zone Easement as shown on the Tentative Map on file with the Department of Planning and Land Use as Environmental Review Number Log # 03-02-059. The purpose of this easement is to limit the need to clear or modify vegetation for fire protection purposes within the adjacent biological open space easement. The easement prohibits the construction or placement of any structure designed or intended for occupancy by humans or animals.
- C. Provide evidence to the satisfaction of the Director of Planning and Land Use that a Clean Water Act, Section 401/404 permit has been issued by the California Regional Water Quality Control Board and the U.S. Army Corps of Engineers for all project related disturbances of waters of the U.S. and/or associated wetlands or provide evidence that such permit is not required.
- D. Provide evidence to the satisfaction of the Director of Planning and Land Use that a Streambed Alteration Agreement has been issued by the California Department of Fish and Game for all project related disturbances of any streambed or provide evidence that such an agreement is not required.
- E. Provide evidence to the satisfaction of the Director of Planning and Land Use that an Endangered Species Act Section 10a and/or a Section 7 Permit has been obtained for the take of least Bell's vireo (*Vireo bellii pulchellus*), or provide evidence from the USFWS and/or ACOE that the permits are not required. .
- F. Provide evidence to the satisfaction of the Director of Planning and Land Use that a contract with a biological construction monitor has been executed to perform the following duties: be onsite during vegetation clearing, grubbing, and grading, when these activities are within 300 feet of biological open space or offsite native vegetation to ensure that all habitat protection measures are in place including fencing and erosion control measures adjacent to preserved areas, including demarcating the limits of brush clearing to prevent direct impacts to Parry's tetracoccus (*Tetracoccus dioicus*) (northern population), and report deficiencies immediately to the DPW Construction Inspector; periodically monitor the work area for excessive dust generation; train contractors, and construction personnel, including the purpose for resource protection, a description of the gnatcatcher and its habitat, and the conservation

measures that should be implemented during project construction; review all landscape plans to ensure landscaping has avoided the use of plants that require intensive irrigation, fertilizers or pesticides, invasive, and non-native plants; halt work when deficiencies require mediation, and notify DPW Construction Inspector within 24 hours if it is necessary to halt work; produce weekly reports to keep at the project site; produce a final report at the completion of each phase or unit and submit to the Director of the DPLU; confer with the Wildlife Agencies within 24 hours any time protected habitat or endangered species are being affected by construction; determine if nesting birds will be affected by clearing and grading and direct construction activities away from nesting areas; and be responsible for notification and oversee remediation if impacts to preserved habitat should occur.

- G. Provide for the approval of the Director of Planning and Land Use evidence that (1) 6.1 acres of coastal sage scrub that is occupied by California gnatcatcher; (2) 20.9 acres of non-native grassland; (3) 1.4 acres of coast live oak woodland; (4) 7.9 acres of freshwater marsh; (5) 1.6 acres of southern willow scrub (creation); (6) 10.5 acres of southern riparian forest (creation), and (7) 496 individual species of Parry's tetracoccus has been secured in one or more of the three following ways:

1. Credits have been purchased in mitigation bank approved by the California Department of Fish & Game, located in the vicinity of the project. Evidence of purchase shall include the following information to be provided by the mitigation bank:
 - a. A copy of the purchase contract referencing the project name and numbers for which the habitat credits were purchased.
 - b. If not stated explicitly in the purchase contract, a separate letter must be provided identifying the entity responsible for the long-term management and monitoring of the preserved land.
 - c. To ensure the land will be protected in perpetuity, evidence must be provided that a dedicated conservation easement or similar land constraint has been placed over the mitigation land.
 - d. An accounting of the status of the mitigation bank. This shall include the total amount of credits available at the bank, the amount required by this project and the amount remaining after utilization by this project.

-AND/OR-

2. Land has been purchased, preserved, and managed in the vicinity of the project and is consistent with the (draft) North County MSCP. A Resource Management Plan (RMP) for the land must be submitted and approved by the Director of the Department of Planning and Land

Use. An open space easement over the acquired habitat must be dedicated to the County of San Diego prior to or immediately following the approval of the RMP. Alternatively, proof that a federal, state or local government agency with the primary mission of resource management has taken fee title to the land may be accepted in lieu of an easement.

-AND/OR-

3. Restore and revegetate land as shown in the Conceptual Offsite Wetland Revegetation Plan (Log # 03-02-059; Biological Technical Report, Appendix I) for wetland creation and/or habitat supporting Parry's tetraodon as follows: (1) Submit to and receive approval from the Director of the Department of Planning and Land Use a Revegetation Plan. The Revegetation Plan shall include (but not be limited to) the following to ensure the establishment of the vegetation: objectives, 24"x 36" map showing the revegetation areas, site preparation information, type of planting materials (e.g. species ratios, source, size material, etc.), planting program, 80 percent success criteria, 5-year monitoring plan and detailed cost estimate. The cost estimate shall include planting, plant materials, irrigation, maintenance, monitoring and report preparation. The report shall be prepared by a County approved biologist and a State of California Licensed Landscape Architect.; (2) Enter into a Secured Agreement with the County of San Diego Department of Planning and Land Use consisting of a letter of credit, bond, or cash for 100 percent of the estimated costs associated with the implementation of the Revegetation Plan and a 10 percent cash deposit not to exceed \$30,000. A cost estimate based on a 3% annual inflation rate shall be submitted and approved by the Director of Planning and Land Use which includes the cost of the plant stock and its installation, irrigation system and installation, cost of monitoring and maintenance of the revegetation area for the required five year period, and report preparation and staff time to review. This agreement is intended to guarantee commitment to project completion and success. The monitoring time and the length of time the Secured Agreement and cash deposit will be in effect starts at the time the installation is accepted by a County staff representative. The Secured Agreement and cash deposit shall be released upon completion of the Revegetation Plan implementation provided the installed vegetation is in a healthy condition and meets the approved success criteria.
- H. Submit and have approval by the DPLU, a Resource Management Plan (RMP) for the perpetual management of the project's open space consistent with the approved conceptual RMP for the project on file with the Department of Planning and Land Use as Environmental Review

Number Log # 03-02-059. The RMP shall include a contract, or other legal agreement, between the County and the project applicant to provide assurance of future compliance.

- I. Submit and have approval by the DPLU, a Revegetation Plan for the onsite wetland enhancement and manufactured buffer (between the MF-1 and OS-2). The Revegetation Plan will be consistent with the approved conceptual Onsite Wetland Enhancement Plan (Appendix I of Biological Technical Report) for the project on file with the Department of Planning and Land Use as Environmental Review Number Log # 03-02-059.
- II. The following specific notes shall be placed on any of the following plans: grading, and or improvement plans, and or building plans:
 - A. "Prior to the conclusion of grading activities and Final Grading Release placement of permanent fencing/walls and open space signage is required as follows:
 1. The grading, and or improvement plans, and/or building plans shall show permanent fences/walls along the open space easement/development boundaries. The fence/wall shall be continuous and at least 4-feet high and have a minimum construction of three strand round wire.
 2. All open space fences/walls and trails shall have open space signs. The signs must be corrosion resistant, a minimum of 6" x 9" in size, not less than 3- feet in height from the ground surface, and state the following: Sensitive Environmental Resources; Disturbance Beyond this Point is Restricted by Easement; Information: Contact County of San Diego, Department of Planning and Land Use; Ref: Log #03-02-059;
 3. Provide evidence to the satisfaction of the Director of Planning and Land Use, that the site photos and a statement from a California Registered Engineer, or licensed surveyor that the permanent walls or fences, and open space signs have been installed according to the direction given above."
 - B. "Prior to the commencement of grading activities conspicuous temporary fences shall be in place to protect natural resources when any clearing, grading, or construction is within 100 feet of Biological Open Space or offsite natural vegetation, as follows:.
 1. The grading, and or improvement plans, and or building plans shall show the location of temporary fences to protect the Biological Open Space boundary and to protect specific biological resources as required by the Biological Construction Monitor.
 2. The temporary fencing shall be removed after the conclusion of such activity."

- C. "Prior to the commencement of grading activities updated focused California gnatcatcher surveys will be conducted prior to brushing and clearing activities."
- D. "Restrict all brushing, clearing and/or grading such that none will be allowed within 300 feet of coastal sage scrub habitat during the breeding season of the California gnatcatcher, southern California rufous crowned sparrow, and migratory birds. This is defined as occurring between February 15 and August 31 of any year. The Director of Planning and Land Use may waive this condition, through written concurrence from the US Fish and Wildlife Service and the California Department of Fish and Game, that no active nests are present in the vicinity of the brushing, clearing or grading."
- E. "Restrict all brushing, clearing and/or grading such that none will be allowed within 300 feet of southern riparian forest during the breeding season of the least Bell's vireo, yellow warbler, yellow breasted-chat, and migratory birds. This is defined as occurring between March 15 and September 15 of any year. The Director of Planning and Land Use may waive this condition, through written concurrence from the US Fish and Wildlife Service and the California Department of Fish and Game, that no active nests are present in the vicinity of the brushing, clearing or grading."
- F. "Restrict all brushing, clearing and/or grading such that none will be allowed within 500 feet of active tree-nesting raptor nests or 800 feet of ground-nesting raptor nest during the raptor breeding season. This period is defined as occurring from January 15 through July 15 (tree-nesting) and February 1 through July 15 (ground nesting). The Director of Planning and Land Use may waive this condition, through written concurrence from the US Fish and Wildlife Service and the California Department of Fish and Game, that no active nests are present in the vicinity of the brushing, clearing or grading."
- G. "At a minimum, the biological monitor shall be onsite weekly during vegetation clearing, grubbing, and grading, and daily during rain events, when construction activities are within 300 feet of Biological Open Space or offsite native vegetation to ensure that all habitat protection measures are in place."

ENVIRONMENTAL FINDINGS:

A. CEQA Findings

To be provided.

B. FINDINGS MADE IN SUPPORT OF THE ISSUANCE OF THE HABITAT LOSS PERMIT:

The following findings are made based upon all of the documents contained in the record for this project, and pursuant to Section 86.104 of County of San

Diego Ordinance No. 8365 (N.S.) and Section 4.2.g of the CSS NCCP Process Guidelines (CDFG, November 1993):

Finding 1.a: The habitat loss does not exceed the five percent guideline.

The Campus Park project will impact 46.7 acres of coastal sage scrub and one pair of California gnatcatcher (*Polioptia californica californica*). Approved coastal sage scrub losses as of the date of April 30, 2009 and including this approval, for the entire unincorporated County, outside the boundaries of the Multiple Species Conservation Program (MSCP), are presented in the following table:

Unincorporated Area Coastal Sage Scrub Cumulative Losses	
Total loss allowed under five percent guideline:	2953.30 acres
Cumulative loss of Coastal sage scrub to date:	1,159.82 acres
Net loss due to this project:	46.7 acres
Total cumulative loss:	1,206.5 acres
Remaining loss under five percent guideline:	1,746.8 acres

Finding 1.b: The habitat loss will not preclude connectivity between areas of high habitat values.

The project site contains approximately 129.6 acres of coastal sage scrub, which is vastly located within the northern portion of the site. Within this portion, the coastal sage scrub is located at the foothills of Monserate Mountain with the higher elevations to be preserved in open space. The coastal sage scrub located at the lower/flatter elevations is intermixed with non-native grassland and is proposed for development. One location out of the five pairs that were observed will be impacted from the proposed development.

The proposed open space for the Campus Park project is located in two distinct areas. The preserve area to the south consists primarily of southern riparian forest and is divided by the northern preserve area by pastureland that is proposed for development. The preserve area to the north is primarily coastal sage scrub habitat that is "C" shaped and conforms with the topography of the site consisting of foothills and drainages that generally trend to the southwest. The northern preserve area is adjacent to Monserate Mountain open space (Heights at Pala Mesa) which is immediately north and east of the property and is part of the southwest-facing sloped foothills is largely undeveloped and connects easterly to Rice Canyon. In addition, the coastal sage scrub habitat preserved in the northern open space, east of Interstate 15 will maintain a north-south "stepping stone" movement corridor for the California gnatcatcher that would connect with coastal sage scrub patches along Interstate 15 to the south, with existing open space to the north (Heights at Pala Mesa).

The project was designed to focus development in the least biologically sensitive areas within the pastureland and in coastal sage scrub areas that are intermixed with non-

native grassland. Approximately 42.3 acres of coastal sage scrub habitat will be impacted from this project which is 10 percent of the total project site. Approximately 87.3 acres of coastal sage scrub habitat will be preserved in open space. This area consists of higher quality coastal sage scrub which will preserve a higher concentration of sensitive plants and wildlife species. Approximately 20 percent of the total project site will be preserved coastal sage scrub habitat within this northern open space. The loss of coastal sage scrub habitat within the less sensitive areas will not preclude connectivity because the preservation of 87.3 acres of coastal sage scrub within the higher areas of sensitivity is connected to larger expanses of open space and undeveloped areas offsite to the north and east.

Additionally, the project proposes to preserve and maintain approximately 6.1 acres of offsite coastal sage scrub habitat that is occupied by California gnatcatchers which will additionally provide for the long-term conservation of gnatcatcher habitat.

For the reasons stated above, the habitat loss will not preclude connectivity between areas of high habitat values.

Finding 1.c: The habitat loss will not preclude or prevent the preparation of the subregional NCCP.

The 416.1 acre site is located in “high” and “very high” habitat value areas as indicated on the Habitat Evaluation Map for the draft North County MSCP. The southern riparian forest habitat located in the southern portion and the coastal sage scrub habitat located in the northern portion will be preserved and is considered “very high” and “high”, respectively. As stated above, the development footprint focused on areas that were previously disturbed, with the preserve areas possessing a higher amount of sensitive species observations and is adjacent to undeveloped areas. The northern open space area comprised mostly of coastal sage scrub habitat (approximately 87.3 acres) would connect to Monserate Mountain and Rice Canyon to the north and east with “high” and “very high” value habitats according to the model. Significant stands of coastal sage scrub occur northeast of the project site near Rice Canyon. Rice Canyon is less than one mile east of the project site and currently is sparsely developed and located in (draft) North County MSCP Pre-approved Mitigation Lands (PAMA). Although not directly connected to the San Luis Rey River to the south, the southern open space area comprised mostly of southern riparian forest (approximately 76.1 acres) provides substantial cover and foraging opportunities for riparian wildlife with “high” and “very high” value habitats.

The pastureland is proposed for development and according to the model is located in “very high” habitat value because it is valued as a raptor foraging area. The pastureland located in the center of the property was historically disturbed from agricultural farming and grazing. The pastureland does not provide a north-south linkage between the coastal sage scrub habitat to the north and the southern riparian forest to the south because this area has been used for cattle grazing since the 1950s and has been fenced and void of vegetation cover ideal for wildlife looking for protection

from predators. The disconnect between the north and south preserve areas is evidenced by the lack of sensitive species observations within the pasture area. Approximately 65.3 acres of pasture and 20.9 acres of non-native grassland habitat will be mitigated in an offsite location.

The development footprint was conceptually accepted by the wildlife agencies in a hardline agreement for the draft North County MSCP. The project will be consistent with the draft North County MSCP.

For the above reasons, the finding that the habitat loss will not preclude or prevent the preparation of the subregional NCCP can be made for the project.

Finding 1.d: The habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with Section 4.3 of the NCCP Process Guidelines.

In accordance with the Final Environmental Impact Report, the project's habitat impacts have been mitigated to less than significant levels by preservation and management of high value habitat at the following ratios: 2:1 for coastal sage scrub, 0.5:1 for non-native grassland and pasture, and 3:1 for southern riparian forest, southern willow scrub, freshwater marsh, and coast live oak woodland (2:1 for fuel management zone). All onsite and offsite mitigation lands are to be placed in dedicated open space easements and will be managed and/or enhanced in perpetuity and will be consistent with the draft North County MSCP.

In addition to dedication and designation of open space, the HLP would require that the following activities occur prior to removal of habitat:

- Biological open space easement dedication,
- A limited building zone easement will be placed adjacent to open space and project boundaries,
- Temporary and permanent fencing with open space signs will be located on the open space boundary facing all proposed development and along trails,
- Brushing, clearing, and/or grading will be restricted within 300 feet of natural habitat types during the breeding season of the gnatcatcher, southern California rufous crowned sparrow, least Bell's vireo, yellow warbler, yellow breasted chat, and migratory birds such that no impacts to nesting will occur.
- Brushing, clearing, and/or grading will be restricted within 500-800 feet of natural habitat types during the breeding season of raptors such that no impacts to nesting will occur.
- Implementation of a Resource Management Plan, approved by the Director of Planning and Land Use and the Wildlife Agencies, for the preservation and management of the onsite open space easements is required. The plan will define activities for stewardship of the land and monitoring of biological resources. A financial mechanism to implement the RMP will be a Landscape

Maintenance District (LMD) that would provide funds to the resource manager to manage the biological open space.

- Implementation of a Revegetation Plan, for the onsite wetland enhancement plan for the southern riparian forest and an offsite wetland revegetation plan for wetland creation.

For the above reasons, the finding that the habitat loss has been minimized and mitigated to the maximum extent practicable can be made for the project.

Finding 2 The habitat loss will not appreciably reduce the likelihood of survival and recovery of listed species in the wild.

The loss of 46.7 acres of onsite and offsite of coastal sage scrub habitat, some of which is occupied by a single pair of California gnatcatchers, will not appreciably reduce the likelihood of survival and recovery of the California gnatcatcher because the project compensates for this loss of occupied habitat by preserving occupied habitat onsite (approximately 87.3 acres) and purchasing and maintaining occupied offsite property (approximately 6.1 acres).

As a precaution, no clearing or grading of scrub habitats will be permitted during the breeding season of the California gnatcatcher, unless pre-construction breeding surveys are done that show gnatcatchers would not be harmed.

Approximately 16.5 acres of Army Corps of Engineers (ACOE) jurisdictional wetlands, 1.6 acres of ACOE waters of the U.S., 8.8 acres of California Department of Fish and Game (CDFG) wetlands, and 1.4 acres of CDFG waters of the State would be impacted by the project. Appropriate permits would be obtained prior to any habitat disturbance associated with the approval of the associated grading permit. Therefore, there will be an added layer of protection for potential listed species associated with jurisdictional wetlands.

Impacts to approximately 15 percent (248 individual species) of the onsite population of Parry's tetracoccus will be mitigated through the preservation of the remaining population (1,440 individual species) and the flagging, fencing, and monitoring of the remaining population that is adjacent to brush clearing. The project also proposes to mitigate for the loss of Parry' tetracoccus by purchasing or creating offsite habitat that supports a minimum of 496 individual species.

The direct loss of least Bell's vireo habitat and one observed location will not appreciably reduce the likelihood of survival and recovery of the Least Bell's vireo because the project compensates for this loss of occupied habitat by preserving and enhancing the onsite occupied habitat and offsite creation of this species habitat in addition to breeding season avoidance. A Section 7 or 10a permit from the USFWS will also be acquired or that evidence that such permits is not required.

The site also supports lower sensitivity plants and animals, including Palmer's grappling-hook, northern red-diamond rattlesnake (*Crotalus ruber ruber*), Belding's orange-throated whiptail (*Aspidoscelis hyperythrus beldingi*), Cooper's hawk (*Accipiter cooperi*), southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*), yellow warbler (*Dendroica petechia*), yellow-breasted chat (*Icteria virens*), and Turkey vulture (*Cathartes aura*). After project implementation, populations of these species would be potentially reduced with the loss of habitat. However, these species are relatively widespread in southern California, and their regional populations would not be imperiled by implementation of the project. The project would not appreciably reduce these species because of the project's habitat preservation and management of the 172.4 acres placed in biological open space easements onsite, enhancement of degraded habitats in the preserve area, offsite habitat creation, breeding season avoidance for birds and raptors, and the requirement to purchase and preserve offsite habitats which would compensate for direct impacts to some habitats.

In summary, although direct impacts would occur to coastal sage scrub habitat, this impact would be compensated for by preservation of occupied onsite habitat and purchase and maintenance of coastal sage scrub habitat occupied by California gnatcatchers. Conformance to the federal Endangered Species Act is expected to occur through the application for and approval of a Habitat Loss Permit for the habitat take.

For all the above species, indirect impacts will also be mitigated by implementation of a Resource Management Plan and construction limitations, including breeding season avoidance, fencing, and monitoring.

In addition to dedication and designation of open space, the HLP would require that the following activities occur for the benefit of survival and recovery of listed species in the wild prior to removal of habitat:

- Biological open space easement dedication,
- A limited building zone easement will be placed adjacent to open space and project boundaries,
- Temporary and permanent fencing with open space signs will be located on the open space boundary facing all proposed development and along trails,
- Brushing, clearing, and/or grading will be restricted within 300 feet of natural habitat types during the breeding season of the gnatcatcher, southern California rufous crowned sparrow, least Bell's vireo, yellow warbler, yellow breasted chat, and migratory birds such that no impacts to nesting will occur.
- Brushing, clearing, and/or grading will be restricted within 500 feet of natural habitat types during the breeding season of raptors such that no impacts to nesting will occur.
- Implementation of a Resource Management Plan, approved by the Director of Planning and Land Use and the Wildlife Agencies, for the preservation and management of the onsite open space easements is required. The plan will

define activities for stewardship of the land and monitoring of biological resources. A financial mechanism to implement the RMP will be a Landscape Maintenance District (LMD) that would provide funds to the resource manager to manage the biological open space.

- Implementation of a Revegetation Plan, for the onsite wetland enhancement plan for the southern riparian forest and an offsite wetland revegetation plan for wetland creation.

Considering all of the above, the finding that the habitat loss will not appreciably reduce the likelihood of survival and recovery of listed species in the wild can be made for the project.

Finding 3: The habitat loss is incidental to otherwise lawful activities.

Habitat removal will require additional discretionary approvals by the County and wildlife agencies. Habitat removal will not commence until:

- All appropriate grading permits, improvement plans, and/or clearing permits have been issued.
- Project conformance with Section 86.104 of the San Diego County Code, including issuance of a Habitat Loss Permit by the County of San Diego and concurrence by the Department of Fish and Game and U.S. Fish and Wildlife Service has been completed.
- Take authorization under the federal and state Endangered Species Acts has been granted.

Because no removal of habitat would occur prior to the approval and issuance of all necessary permits, the habitat loss would be incidental to otherwise lawful activities.

NCCP FLOWCHART

1. Natural land: Is natural vegetation present? Yes, coastal sage scrub, southern riparian scrub, southern willow scrub, freshwater marsh, and coast live oak woodland.
2. CSS: Is CSS present? Yes, 129.6 acres onsite.
3. Large size: Is the CSS the most dense CSS in the subregion? No, the impacted coastal sage scrub habitat is less dense and intermixed with non-native grassland than the proposed and existing northern onsite open space area. However, coastal sage scrub habitat appears to be approximately less than 50 percent cover within a 1 mile radius from the impact area.
4. Proximity: Is the land close to High Value District? Yes, the proposed northern open space preservation area, existing open space to the north and east (Heights at Pala Mesa) and Rice Canyon area to the east. According to draft

North County MSCP maps the Pala Core Planning Unit is located east of the project.

5. Landscape linkages: Is the land located in a corridor between Higher Value Habitats? No, agricultural lands consisting of pasture and grazing areas are located to the immediate south and orchards to the southeast of the coastal sage scrub impact area. Highway 395 and Interstate 15 are located to the east, along with other development such as the Pala Mesa Resort to the northwest. According to the draft North County MSCP maps the proposed project preserve areas are located in Linkages primarily between Pala Core Planning Unit and Santa Margarita Planning Unit.
6. Species presence: Does the land support high density of target species? Yes, surveys indicate that the project site located 5 pairs of California gnatcatchers in addition to Parry's tetracoccus (County sensitive – Group A) and least Bell's vireo. Other sensitive species were observed on the project site that are considered sensitive, but to a lesser degree than those mentioned above.

In consideration of the above flowchart, the project is "Intermediate Potential Value for Long-term Conservation", therefore the 2:1 mitigation ratio for coastal sage scrub habitat is appropriate.

MITIGATION MONITORING AND REPORTING PROGRAM:

The following shall be the Mitigation Monitoring or Reporting Program for this Habitat Loss Permit:

Public Resources Code Section 21081.6 requires the County to adopt a mitigation reporting or monitoring program for any project that is approved on the basis of a mitigated Negative Declaration or an Environmental Impact Report for which findings are required under Section 21081(a)(1). The program must be adopted for the changes to a project which the County has adopted, or made a condition of project approval, in order to mitigate or avoid significant effects on the environment. The program must be designed to ensure compliance during project implementation.

The mitigation monitoring program is comprised of all the environmental mitigation measures adopted for the project. The full requirements of the program (such as what is being monitored, method and frequency, who is responsible, and required time frames) are found within the individual project conditions. These conditions are referenced below by category under the mechanism which will be used to ensure compliance during project implementation.

- Subsequent Project Permits

Compliance with the following conditions is assured because specified subsequent permits or approvals required for this project will not be approved until the conditions have been satisfied:

I – A, B, C, D, E, F, G, H, AND I

- Ongoing Mitigation

Compliance with the following conditions is assured because County staff will monitor the on-going requirements and, if necessary, pursue the remedies specified in the project permit, the security agreement, or the mitigation monitoring agreement:

II – A, B, C, D, E, F, AND G

NOTICE: The issuance of this permit by the County of San Diego does not authorize the applicant for said permit to violate any federal, state, or county laws, ordinances, regulations, or policies, including but not limited to, the federal Endangered Species Act and any amendments thereto.

NOTIFICATION TO APPLICANT: Because your project has an effect on native biological resources, State law requires the payment of a \$_____ fee to the California Department of Fish and Game for their review of the Environmental Impact Report (Fish and Game Code §711.4) and a \$____ administrative fee to the County (\$_____ total). If you made this payment at the time of public review of the environmental document pursuant to Administrative Code Section 362, Article XX, effective August 27, 1992, you have met this obligation. If the fee has not been paid, to comply with State law, the applicant should remit to the County Department of Planning and Land Use, within two (2) working days of the effective date of this approval (the “effective date” being the end of the appeal period, if applicable). **The payment must be by certified check or cashier’s check payable to the “County of San Diego” and can be submitted to the cashier at the DPLU office or directly to the County Clerk.** The fees (excluding the administrative fee) may be waived for projects that are found by the Department of Planning and Land Use and the California Department of Fish and Game to have a no effect impact on fish and wildlife resources. Failure to remit the required fee in full within the time specified above will result in County notification to the State that a fee was required but not paid, and could result in State imposed penalties and recovery under the provisions of the Revenue and Taxation Code. In addition, Section 21089(b) of the Public Resources Code, and Section 711.4(c) of the Fish and Game Code, provide that no project shall be operative, vested, or final until the required filing fee is paid.

JUDICIAL REVIEW TIME LIMITATIONS: The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure Section 1094.6, which has been made applicable in the County of San Diego by San Diego County Code Section 11.120. Any petition or other paper seeking judicial review must be filed in the appropriate court not later than the 90th day following the date on which this decision

becomes final; however, if within 10 days after the decision becomes final a request for the record of the proceedings is filed and the required deposit in an amount sufficient to cover the estimated cost of preparation of such record is timely deposited, the time within which such petition may be filed in court is extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the party, or the party's attorney of record. A written request for the preparation of the record of the proceedings shall be filed with the Director, Department of Planning and Land Use, 5201 Ruffin Road, Suite B, San Diego, California 92123.

The foregoing decision was approved by the Director of Planning and Land Use on TO BE DETERMINED. A copy of this decision, and the documentation supporting the decision, is on file in the Department of Planning and Land Use offices at 5201 Ruffin Road, Suite B, San Diego, California.

DEPARTMENT OF PLANNING AND LAND USE
ERIC GIBSON, DIRECTOR

BY:

Jason Giffen, Section Chief
Project Planning Division

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Attachments

Habitat Loss Exhibit dated September 22, 2009
USGS Map

cc: To be provided at issuance of Habitat Loss Permit



